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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1275/2013

% ***Judgment dated 11.12.2013***

KULDEEP KUMAR Petitioner

Through: Mr.Mir Akhtar Hussain, Advocate

versus

LT.GOVERNOR OF DELHI & ORS. Respondent

Through: Mr.Saleem Ahmed, ASC along with
Ms.Charu Dalal, Advocate and
S.I. Niranjana Kumar, P.S. Shadara.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present petition, petitioner prays for issuance of a writ of certiorari quashing the order dated 24.7.2013 passed by respondent no.1 and order dated 27.6.2013 passed by respondent no.2.
2. The order of externment dated 27.6.2013 passed by the Additional Deputy Commissioner of Police, North East District, Delhi for removal / externment of the petitioner beyond the limits of NCT of Delhi for a period of one year w.e.f. 4.7.2013 and the subsequent order passed in appeal dated 24.7.2013 confirming the order dated 27.6.2013 are the subject to challenge in the present writ petition.
3. Counsel for the petitioner submits that the impugned order is bad in law and suffers from serious error apparent on the face of the record. It is submitted that the order shows complete non-application of mind inasmuch as the order gives reference to 11 cases pending against the petitioner at the time when the order of externment was passed, whereas on the date of the order the petitioner stood acquitted in 10 cases and convicted in one matter.

4. Counsel further submits that at the time when the notice was issued the petitioner was in jail and continued to remain in Jail from June, 2009 upto December, 2012. The mere fact that the petitioner was in jail when the notice was issued and the order was passed by itself would show that the respondents have violated section 47 of the Delhi Police Act, as per which the movements or acts of any person are causing or are calculated to cause any danger or harm to person or property and also there have been reasonable grounds for believing that the person is engaged or is about to be engaged in the commission of offence involving force or violence. Counsel for the petitioner submits that since the petitioner was in jail there could not have been any reason for the respondent to reach at such a conclusion.
5. Another ground stated in the order of externment is that witnesses are not deposing against the petitioner out of fear. Having regard to the fact that the petitioner was convicted in one matter it cannot be said that persons are afraid and out of fear they did not appear as witnesses against the petitioner. With regard to 10 cases in which the petitioner has been acquitted, counsel for the petitioner submits that the batch of 35 cases were filed and in all the cases all the accused persons have been acquitted not because the witnesses turned hostile but since the prosecution had falsely implicated all the accused persons, thus the case of the prosecution was rightly not supported by the witnesses. Counsel for the petitioner submits that mere fact that the State did not file an appeal in a single case would show that there is strength in the submission made by him.
6. Counsel for the State has opposed this petition and submitted that the petitioner has past criminal record as he was involved in 11 cases; in 10 cases he was acquitted because the witnesses had turned hostile and

moreover, the pendency of the cases by itself shows that he is a person, who is capable of indulging in force or violence and thus the order has been rightly passed.

7. Counsel for the State also clarifies that although the notice was issued on a date when the petitioner was in Judicial Custody, but the same was served upon him only when he was released and he participated in the proceedings as well.
8. Heard counsel for the parties and considered their rival submissions. Sections 47 and 50 of the Delhi Police Act are special provisions by which the liberty of a person can be curtailed without trial, in case the Commissioner of Police is satisfied that the movement or acts of such a person are causing or are likely to cause alarm, danger or harm to a person or property. The Commissioner of Police must also be satisfied that there are reasonable grounds that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or in the abetment of such offence and further that a person is so desperate or dangerous that his mere presence in Delhi or any part thereof is hazardous to the community. The explanation to this section clarifies that a person, who during a period within one year immediately preceding the commencement of an action has been found on not less than three occasions to have committed or to have been involved in any of the acts mentioned in this section, shall be deemed to have habitually committed that act.
9. Section 47 of Delhi Police Act, 1978, reads as under:

“47. Removal of persons about to commit offences.- Whenever it appears to the Commissioner of Police-

(a) that the movements or acts of any person are causing or are calculated to cause alarm, danger or harm to person or property; or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code (45 of 1860) or under section 290 or sections 489A to 489E (both inclusive) of that Code or in the abetment of any such offence; or

(c) that such person-

(i) is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community; or

(ii) has been found habitually intimidating other persons by acts of violence or by show of force; or

(iii) habitually commits affray or breach of peace or riot, or habitually makes forcible collection of subscription or threatens people for illegal pecuniary gain for himself or for others; or

(iv) has been habitually passing indecent remarks on women and girls, or teasing them by overtures;

and that in the opinion of the Commissioner of Police witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the Safety of their person or property, the Commissioner of Police may by order in writing duly served on such person, or by beat of drum or otherwise as he thinks fit, direct such person to so conduct himself as shall seem necessary in order to prevent violence and alarm or to remove himself outside Delhi or any part thereof, by such route and within such time as the Commissioner of Police may specify and not to enter or return to Delhi or part thereof, as the case may be, from which he was directed to remove himself.

Explanation.- A person who during a period within one year immediately preceding the commencement of an action under this section has been found on not less than three occasions to have

committed or to have been involved in any of the acts referred to in this section shall be deemed to have habitually committed that act.”

10. The Supreme Court in the case of *Prem Chand Vs. Union of India* reported at AIR 1981 SC 613, has held that Sections 47 and 50 of the Delhi Police Act have to be read strictly. It was held that mere apprehension is not enough for passing an order of externment; and there must be clear and present danger based on credible material before passing such an order. Relevant paragraph of the judgment reads as under:

“9. The provisions of the statute ostensibly have a benign purpose and in the context of escalation of crimes, may be restrictions which, in normal times might appear unreasonable, may have to be clamped down on individuals. We are conscious of the difficulties of detection and proof and the strain on the police in tracking down criminals. But fundamental rights are fundamental and personal liberty cannot be put at the mercy of the Police. Therefore, Ss. 47 and 50 have to be read strictly. Any police apprehension is not enough. Some ground or other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. We are clear that the easy possibility of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied. We are further clear that natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Art. 14, 19 and 21 of the Constitution as expounded by this Court in *Maneka Gandhi*, (1978) 1 SCC 248 : (AIR 1978 SC 597).”

11. In this case admittedly, when the notice was issued to the petitioner was

lodged in jail and only after his release the notice was served upon him. The order on externment in my view lacks application of mind in view of the fact that at the time when the aforesaid order was passed, it was not considered that out of 11 cases instituted against the petitioner he was acquitted in 10 cases. I am also not persuaded by the submission of counsel for the State that since the witnesses turned hostile in 10 cases the acquittal can be of no benefit to the petitioner as I am informed that in all the matters all the accused persons were acquitted and moreso the State did not file any appeal which fact is not disputed before this court.

12. Having regard to the fact that the petitioner was convicted in one matter it cannot be said that the witnesses did not depose against him out of fear, which has been taken as a ground for externment.
13. It is also not clear that how a person, who is in jail, his movements or acts can cause alarm or danger and as to how he can engage or it can be said that he is about to be engaged in the commission of offence. No doubt the notice was served upon the petitioner after his release, however, at the time when the notice was served upon him the cause of action, if any, would have become stale. Had there been any fresh reason or ground, it would have been open for the Commissioner of Police to issue a fresh notice to the petitioner rather than pressing a notice which was issued at the time when the petitioner was admittedly in judicial custody.
14. In the light of the above, the order of externment dated 27.6.2013 passed by respondent no.2 and the order dated 24.7.2013 passed by respondent no.1 in appeal are quashed.
15. The petition stands disposed of, in above terms.

G.S.SISTANI, J

DECEMBER 11, 2013 ssn